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U.S. Citizenship
and Immigration
Services

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JAN 25 2005

FILE:

Office: Texas Service Center

Date:

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy N. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record reveals that the applicant filed his application on May 8, 2002. On June 14, 2002, the applicant was requested to submit additional evidence establishing his qualifying physical presence in the United States and his eligibility for TPS late registration. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on September 23, 2002. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen.

The applicant responded to the director's decision on September 16, 2003. The applicant requested that he be given another opportunity to prove he has lived in the United States since 1998, and that he has all of the evidence to prove he has lived in the United States. The applicant, however, did not provide any additional documentation in support of his claim. Further, it is noted that the applicant's response to the director's denial was received more than one year after the issuance of the director's decision.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. However, as the director's decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the director shall consider the applicant's response as a motion to reopen.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further action consistent with the above and entry of a decision.